

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA
3

4 UNITED STATES OF AMERICA,) Case No. 08CR2386-JM
5 Plaintiff,) San Diego, California
6 vs.) Friday,
7 KRAPCHAN, et al.,) August 5, 2008
8 Defendants.) 9:00 a.m.
9

10 TRANSCRIPT OF CHANGE OF PLEA HEARING
11 BEFORE THE HONORABLE NITA L. STORMES
12 UNITED STATES MAGISTRATE JUDGE

12 APPEARANCES:

13 For the Plaintiff: ORLANDO GUTIERREZ, ESQ.
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15 Attorney
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25 Proceedings recorded by electronic sound recording;
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1 SAN DIEGO, CALIFORNIA, FRIDAY, AUGUST 5, 2008, 9:00 AM

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3 (Call to order of the Court.)

4 THE CLERK: Calling matter 6 and 7 off the
5 calendar. Case Number 98CR2340-BTM, United States versus
6 Jose Carlos Aragon Carona (phonetic) and Case Number
7 08CR2386 United States versus Hassan Shirani both on
8 calendar for change of plea hearing.

9 (Pause while the Court heard other matters.)

10 MR. WARWICK: Good morning, your Honor, Tom
11 Warwick on behalf of Mr. Shirani who is present before the
12 Court.

13 THE COURT: Good morning.

14 MR. GUTIERREZ: Orlando Gutierrez on behalf of the
15 United States for Mr. Shirani's case, your Honor.

16 THE COURT: Good morning.

17 MR. GUTIERREZ: Your Honor, if I may make a
18 request before we start?

19 THE COURT: All right.

20 MR. GUTIERREZ: With regard to Mr. Shirani's plea
21 agreement. He signed this plea agreement before a deadline
22 before the indictment was returned. So the case numbers
23 indicated on the plea agreement are an MJ case number. He
24 is currently under indictment under 08CR2386. It's the
25 party's intention rather than to have him execute an

1 identical plea agreement that he would just interlineate
2 the sections that have an old case number reference
3 specifically on page two. It is the same exact charge. The
4 only difference is the page number is different. So it
5 would be the party's intent that this plea agreement is
6 still binding. And it would be applicable to the
7 indictment, as it would the complaint, and we would like to
8 go forward if the Court would allow with this.

9 THE COURT: Well it's been interlineated on the
10 original plea agreement with the new criminal case number.
11 And it is the desire of counsel that this plea agreement,
12 which contains the magistrate judge number be applied in the
13 newly indicted case 08CR2386, that's correct?

14 MR. GUTIERREZ: That would be our intention, your
15 Honor.

16 MR. WARWICK: That is correct on behalf of Mr.
17 Shirani, your Honor.

18 THE COURT: All right.

19 MR. GUTIERREZ: Thank you, your Honor.

20 THE COURT: You're welcome.

21 Mr. Perrault, would you please place each of these
22 gentlemen under oath.

23 HASSAN SHIRANI - DEFENDANT - SWORN

24 (Pause while the Court heard other matters.)

25 THE COURT: Good morning, gentlemen. Has either

1 of you taken any drugs or other medications that would
2 interfere with your ability to understand the Court
3 proceedings this morning, Mr. Shirani?

4 THE DEFENDANT: No.

5 (Pause while the Court heard other matters.)

6 THE COURT: If at any time during this proceeding
7 you don't understand something I say, will you let me know
8 that so I can clarify it for you, Mr. Shirani?

9 THE DEFENDANT: Yes.

10 (Pause while the Court heard other matters.)

11 THE COURT: You both understand that you do have
12 the right to appear before the district judge in your case,
13 who is also the sentencing judge, in order to enter your
14 guilty plea, MR. Shirani?

15 THE DEFENDANT: Yes.

16 (Pause while the Court heard other matters.)

17 THE COURT: And both of you agree to give up that
18 right and enter your guilty plea before me a magistrate
19 judge, Mr. Shirani?

20 THE DEFENDANT: Yes.

21 (Pause while the Court heard other matters.)

22 THE COURT: I'm now going to advise you of your
23 constitutional rights. You have the right to persist in
24 your plea of not guilty. You have the right to a speedy and
25 public trial. You have the right to be tried by a jury, or

1 you could give up that right and agree to be tried by a
2 judge. You have the right to assistance of counsel
3 throughout the proceedings including at trial. If you
4 cannot afford to pay an attorney to represent you at trial,
5 appointed counsel will represent you throughout the trial at
6 no cost to you. You have the right to confront and cross
7 examine witnesses who would testify against you. You have
8 the right to present a defense and subpoena witnesses to
9 court to testify in your behalf. You also have the right
10 against compelled self-incrimination. Meaning that you
11 cannot be forced to testify at any hearing, or at trial, and
12 the Government cannot comment on your silence. Does each of
13 you understand the constitutional rights that I've just
14 described to you, Mr. Shirani?

15 THE DEFENDANT: Yes.

16 (Pause while the Court heard other matters.)

17 THE COURT: If you plead guilty to the charge
18 against you, there will be no trial and you will be giving
19 up the constitutional rights that I've just described with
20 the exception of the right to continued assistance of trial.
21 Does each of you understand and agree to give up those
22 rights, Mr. Shirani?

23 THE DEFENDANT: Yes.

24 (Pause while the Court heard other matters.)

25 THE COURT: All right. Mr. Shirani, the charge in

1 count one of the indictment is that beginning on a date
2 unknown and continuing up to and including June 13, 2008
3 within the Southern District of California, you along with
4 co-defendants Michael Krapchan and Ryan Wedding, knowingly
5 and intentionally conspired to possess with intent to
6 distribute more than five kilograms of cocaine.

7 If you were to go to trial on this charge, the
8 Government would have to prove the following elements of the
9 crime beyond a reasonable doubt. One, that there was an
10 agreement between at least two persons to distribute
11 cocaine.

12 Two, that you became a member of the conspiracy
13 knowing of one of its objects and intending to help
14 accomplish it. If you plead guilty to the charge, you will
15 be admitting each of those elements. Do you understand
16 that, sir?

17 THE DEFENDANT: Yes.

18 (Pause while the Court heard other matters.)

19 THE COURT: All right, gentlemen, I'm now going to
20 advice you of the maximum penalties that are associated with
21 the charge against each of you.

22 Mr. Shirani, in your case the maximum prison term
23 is a maximum life in prison with a minimum mandatory term of
24 ten years. There is a maximum fine of \$4,000,000, a
25 mandatory special assessment of \$100, a term of supervised

1 release of five years, but no more than five years, and a
2 forfeiture of all conveyances used in connection with the
3 offense, all property that constitutes or is derived from or
4 traceable to proceeds obtained from commission of the
5 offense and all real property or personal property used to
6 facilitate the commission of the offense. Do you understand
7 the maximum penalties you face if you plead guilty to count
8 one of the indictment, sir?

9 THE DEFENDANT: Yes.

10 (Pause while the Court heard other matters.)

11 THE COURT: Gentlemen, what this supervised
12 release provision means in each of your cases is that after
13 you served a prison term and you're released from prison,
14 you still have to comply with certain conditions that are
15 imposed by the sentencing judge. If at any time during the
16 period of your supervised release you have found to have
17 violated the conditions of your supervised release, then you
18 can be returned to prison in Mr. Shirani's case for a period
19 of up to five years. And in Mr. Aragon's case for a period
20 up to one year. And that would be in addition to the time
21 you had already spent in prison on the original charge.
22 Does each of you understand that, Mr. Shirani?

23 THE DEFENDANT: Yes.

24 (Pause while the Court heard other matters.)

25 THE COURT: I also need to advise you that if you

1 were currently on probation, parole or supervised release --
2 Mr. Shirani, I need you to listen to me when I'm talking
3 here, all right. Now, I need to advice you that if you are
4 currently on probation, parole or supervised release from a
5 separate criminal case, your guilty plea in this case would
6 trigger a violation of that status. Does each of you
7 understand that, Mr. Shirani?

8 THE DEFENDANT: Yes.

9 (Pause while the Court heard other matters.)

10 THE COURT: I also need to advise you that if
11 there are criminal charges presently pending against you in
12 a separate criminal case, the sentencing judge in this case
13 does not have the authority to order that the sentence in
14 this case run concurrently with any separate criminal
15 sentence that might be imposed in a different criminal case.
16 Does each of you understand that, Mr. Shirani?

17 THE DEFENDANT: Yes.

18 (Pause while the Court heard other matters.)

19 THE COURT: Now, Mr. Shirani, are you a United
20 States citizen?

21 THE DEFENDANT: No.

22 THE COURT: You understand then that as a result
23 of your guilty plea and after you serve a prison sentence in
24 your case, you will be deported from the United States?

25 THE DEFENDANT: Yes.

1 (Pause while the Court heard other matters.)

2 THE COURT: Now, the precise sentence in each of
3 your cases will be determined by the sentencing judge after
4 he consults the sentencing guidelines.

5 Has each of you had an opportunity to speak with
6 your attorney about how the sentencing guidelines might
7 apply to you, Mr. Shirani?

8 THE DEFENDANT: Yes.

9 (Pause while the Court heard other matters.)

10 THE COURT: I need to caution you that the
11 sentencing guidelines are advisory only. Meaning that the
12 sentencing judge is not required to follow them. Therefore,
13 the sentencing judge could impose the maximum statutory
14 sentence in each of your cases even if the sentencing
15 guidelines advise something less than that. Does each of
16 you understand that, Mr. Shirani?

17 THE DEFENDANT: Yes.

18 (Pause while the Court heard other matters.)

19 THE COURT: Neither your attorney nor the Court
20 can tell you today the precise sentence that will be imposed
21 by the sentencing judge. If the sentence you receive is
22 more severe than what you expected, you will still be bound
23 by your guilty plea. While you might have the right to
24 appeal your sentence, you will not have the right to
25 withdraw your guilty plea. Does each of you understand

1 that, Mr. Shirani?

2 THE DEFENDANT: Yes.

3 (Pause while the Court heard other matters.)

4 THE COURT: Now do you have the right to appeal
5 any sentence that is imposed by the Court unless you give up
6 that right as part of your plea agreement with the United
7 States Government.

8 I have been handed a written plea agreement in
9 each of your cases. And I will ask counsel first for Mr.
10 Shirani whether this plea agreement and its addendum are the
11 entire agreement between the parties?

12 MR. WARWICK: Yes, your Honor, as to both.

13 (Pause while the Court heard other matters.)

14 THE COURT: Mr. Shirani, in the lower right hand
15 corner of each page of the plea agreement, and when I refer
16 to plea agreement I will be referring to the plea agreement
17 and its addendum, I see in the lower right hand corner the
18 initials H.S., those are your initials, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: And do your initials on each page of
21 the plea agreement signify that you read that page, or had
22 it read to you, and understood its contents?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you have an opportunity to review
25 the entire plea agreement with your attorney before you

1 signed it on the last page?

2 THE DEFENDANT: Yes.

3 THE COURT: And this is your signature on the last
4 page of the main plea agreement and on the addendum?

5 THE DEFENDANT: Yes.

6 THE COURT: And do you have any questions that you
7 want to ask the Court about the terms of your written plea
8 agreement?

9 THE DEFENDANT: No.

10 THE COURT: And are you satisfied with the
11 services of your attorney?

12 THE DEFENDANT: Yes.

13 (Pause while the Court heard other matters.)

14 THE COURT: Gentlemen, I do want to discuss one
15 provision that appears in each of your plea agreements with
16 you. It's entitled "Defendant Waives Appeal and Collateral
17 Attack." I want to make sure that each of you understands
18 what those terms mean.

19 To appeal your conviction or sentence, means to
20 appeal the result to a higher court. To collaterally attack
21 your conviction or sentence means to challenge their
22 validity in any kind of future proceeding whether it's a
23 criminal proceeding, a civil proceeding or even an
24 administrative proceeding. Does each of you understand what
25 those terms mean, Mr. Shirani?

1 THE DEFENDANT: Yes.

2 (Pause while the Court heard other matters.)

3 THE COURT: In each of your plea agreements it
4 provides that in return for the Government's concessions in
5 the plea agreement you waive to the full extent of the law
6 any right to appeal or collaterally attack the conviction
7 and sentence unless the Court were to impose a prison
8 sentence greater than the high end of the guideline range
9 that's recommended by the Government at the time of
10 sentencing. If the sentence you receive is greater than the
11 high end of the guideline range then you can appeal it. But
12 the Government will be free to support on appeal the
13 sentence that is actually imposed.

14 If you believe the Government's sentencing
15 recommendation is not in accordance with your plea
16 agreement, you have to object at the time of sentencing
17 otherwise your objection will be deemed waived.

18 Does each of you understand and agree to this
19 provision on waiver of appeal and collateral attack, Mr.
20 Shirani?

21 THE DEFENDANT: Yes.

22 (Pause while the Court heard other matters.)

23 THE COURT: And, counsel, has each of you
24 discussed the written plea agreement in its entirety with
25 your client including the provisions on waiver of appeal and

1 collateral attack?

2 MR. WARWICK: Yes, your Honor.

3 (Pause while the Court heard other matters.)

4 THE COURT: And in each of your opinions, does
5 your client understand the plea agreement in its entirety?

6 MR. WARWICK: Yes, your Honor.

7 (Pause while the Court heard other matters.)

8 THE COURT: All right. Then, gentlemen,
9 considering the potential penalties you can receive and the
10 other consequences of the guilty plea I have discussed this
11 morning, do you still want to give up the constitutional
12 rights I told you about earlier and enter a guilty plea to
13 the charge against you, Mr. Shirani?

14 THE DEFENDANT: Yes.

15 (Pause while the Court heard other matters.)

16 THE COURT: Did anybody promise you anything other
17 than what's contained in your written plea agreement in
18 order to get you to plead guilty, Mr. Shirani?

19 THE DEFENDANT: No.

20 (Pause while the Court heard other matters.)

21 THE COURT: Did anybody threaten you in order to
22 get you to plead guilty, Mr. Shirani?

23 THE DEFENDANT: No.

24 (Pause while the Court heard other matters.)

25 THE COURT: I'm going to read the charge to you

1 and ask you how you plead. And then I'm going to ask you
2 some questions about the underlying facts. And I need to
3 caution you that if you were to give a false answer to any
4 question I ask you could later be prosecuted for making a
5 false statement. Does each of you understand that, Mr.
6 Shirani?

7 THE DEFENDANT: Yes.

8 (Pause while the Court heard other matters.)

9 THE COURT: Mr. Shirani, the charge in count one
10 is that beginning on a date unknown and continuing up to
11 June 13, 2008 within the Southern District of California and
12 elsewhere Defendant Michael Krapchan, Hassan Shirani and
13 Ryan Wedding did knowingly and intentionally conspire and
14 agree with each other and others known and unknown to
15 possess with intent to distribute and to distribute five
16 kilos and more of cocaine, a schedule two controlled
17 substance, in violation of Title 21 United States Code
18 Sections 841(a) and 846. How do you plead to that charge,
19 sir, are you guilty or not guilty?

20 THE DEFENDANT: Guilty.

21 (Pause while the Court heard other matters.)

22 THE COURT: Mr. Shirani, is it true that in
23 furtherance of the conspiracy charged in the indictment, on
24 or about June 13, 2008 you traveled to the Southern District
25 of California with your co-defendant Ryan Wedding for the

1 purpose of purchasing 24 kilos of cocaine?

2 THE DEFENDANT: Yes.

3 THE COURT: And is it further true that this drug
4 purchase was previously brokered by your co-defendant
5 Michael Krapchan?

6 THE DEFENDANT: Yes.

7 THE COURT: And is it further true that in
8 furtherance of the conspiracy on June 13, 2008 within the
9 Southern District of California you and your co-defendant
10 Ryan Wedding together possessed \$117,000 in U.S. currency,
11 which was to be used to purchase the cocaine, is that
12 correct, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: And is it further true that rather
15 take possession of the entire amount of the cocaine in one
16 transfer, you and your co-defendants, Wedding and Krapchan,
17 agreed that the cocaine purchase would occur over the span
18 of several smaller transfers, is that correct, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: And you and your co-defendants,
21 Wedding and Krapchan, further agreed that Mr. Krapchan would
22 be provided with the required amount of U.S. currency to
23 conduct the actual individual transfers while you and your
24 co-defendant Wedding waited for the transfer to occur at a
25 separate location?

1 THE DEFENDANT: Yes.

2 THE COURT: And is it further true that in
3 furtherance of the conspiracy on June 13, 2008, you and your
4 co-defendants, Wedding and Krapchan, further agreed that the
5 cocaine would be transferred and delivered from the Southern
6 District of California to other individuals for the purpose
7 of distribution?

8 THE DEFENDANT: Yes.

9 THE COURT: And is further true that in
10 furtherance of this conspiracy on June 13, 2008, within the
11 Southern District of California, you and your co-defendant
12 Wedding provided Mr. Krapchan with the first installment of
13 \$17,000 in U.S. currency for the purpose of purchasing the
14 initial sample of cocaine?

15 THE DEFENDANT: Yes.

16 THE COURT: And is further true that while you and
17 co-defendant Wedding waited at Mr. Krapchan's hotel room
18 your co-defendant Krapchan exchanged the U.S. currency for
19 one kilo of cocaine?

20 THE DEFENDANT: Yes.

21 THE COURT: And the cash was given to your co-
22 defendant Krapchan that was sufficient to purchase seven
23 kilos of cocaine, is that correct, sir?

24 THE DEFENDANT: It is.

25 THE COURT: And is further true that the U.S.

1 currency described in the indictment was used to facilitate
2 the conducting of the illegal act to which you are pleading
3 guilty specifically that you possessed the U.S. currency for
4 the purpose of purchasing cocaine for distribution, is that
5 correct, sir?

6 THE DEFENDANT: Yes.

7 MR. GUTIERREZ: Your Honor.

8 THE COURT: Yes.

9 MR. GUTIERREZ: Given that this case is going to
10 go to trial relative to the two co-defendants, I would ask
11 the Court's permission on page five paragraph four the last
12 sentence where it says, "The cash given to the co-defendant
13 Krapchan ..."

14 THE COURT: Yes.

15 MR. GUTIERREZ: Would the Court allow me to
16 interlineate, "... the cash to be given to co-defendant
17 Krapchan?"

18 MR. WARWICK: No objection. That would be
19 factual, your Honor.

20 THE COURT: All right. Then let me ask again of
21 Mr. Shirani, is it true that the cash to be given to your
22 co-defendant, Krapchan, was sufficient to purchase seven
23 kilos of cocaine, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: And you understand and agree to the

1 criminal forfeiture of the following assets approximately
2 \$100,000 in U.S. currency seized on June 15, 2008 from the
3 Comfort Inn, room 304, Ventura Boulevard in Woodland Hills,
4 California?

5 THE DEFENDANT: Yes.

6 THE COURT: And approximately \$1,570 in U.S.
7 currency seized from you on June 13, 2008?

8 THE DEFENDANT: Yes.

9 THE COURT: And approximately \$17,000 in U.S.
10 currency seized on June 13, 2008?

11 THE DEFENDANT: Yes.

12 THE COURT: And you further agree you will not
13 contest or assist any other person in contesting the
14 criminal forfeiture of the following assets from your co-
15 conspirators approximately \$125 in U.S. currency seized from
16 co-conspirator Michael Krapchan on June 13, 2008. Is that
17 correct, sir?

18 THE DEFENDANT: Yes.

19 THE COURT: And approximately \$3,000 in U.S.
20 currency seized from your co-conspirator Ryan Wedding on
21 June 13, 2008?

22 THE DEFENDANT: Yes.

23 THE COURT: Is the Assistant United States
24 Attorney satisfied with the factual basis as to Mr. Shirani?

25 MR. GUTIERREZ: Yes, your Honor, thank you very

1 much.

2 (Pause while the Court heard other matters.)

3 THE COURT: And, counsel, is each of your client's
4 pleas made voluntarily and with your concurrence?

5 MR. WARWICK: Yes, as to both of them.

6 (Pause while the Court heard other matters.)

7 THE COURT: All right, Mr. Perrault, would you
8 please now rearraign each of these gentlemen.

9 THE CLERK: Yes, your Honor. Now that you've each
10 been advised of your rights, the charges against you and the
11 possible sentence, as to Mr. Shirani, how do you now plead
12 to count one of the indictment guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 (Pause while the Court heard other matters.)

15 THE COURT: This Court finds that each of the
16 Defendants' guilty pleas is made knowingly and voluntarily
17 and with a full understanding of the nature of the charge,
18 the Defendants' rights and the consequences of the plea and
19 that there is a factual basis for each of these pleas. I
20 will therefore recommend that the district judge accept each
21 of your pleas.

22 And for Mr. Shirani, I'm going to place your
23 sentencing hearing on the calendar of Judge Miller on
24 November 7 at 9:00 o'clock in the morning. And I will
25 exclude time between today's date and November 7 on the

1 ground that Judge Miller will be considering your tendered
2 guilty plea.

3 (Pause while the Court heard other matters.)

4 THE COURT: Now I need to vacate the dates as to
5 Mr. Shirani only?

6 MR. GUTIERREZ: Yes, your Honor, please.

7 THE COURT: All right. So the trial date as to
8 Mr. Shirani will be vacated and only as to Mr. Shirani. Are
9 there any other dates, motion dates?

10 MR. GUTIERREZ: Yes, your Honor.

11 THE COURT: And all motion dates.

12 (Pause while the Court heard other matters.)

13 THE COURT: Thank you ladies and gentlemen.

14 MR. GUTIERREZ: Thank you, your Honor.

15 MR. WARWICK: Thank you, your Honor.

16 THE COURT: You're welcome

17 (Proceedings concluded.)
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1 I certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.

4
5 /s/L.L. Francisco 7/23/09
6 Transcriber Date

7 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

8 /s/L.L. Francisco
9 L. L. Francisco, President
Echo Reporting, Inc.

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